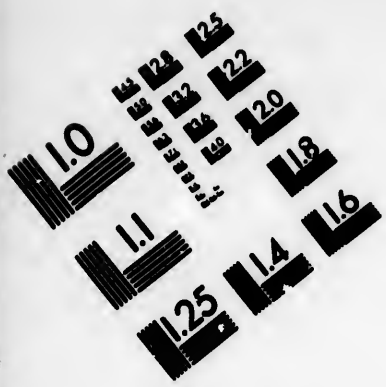


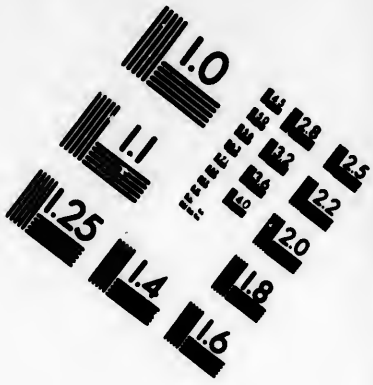


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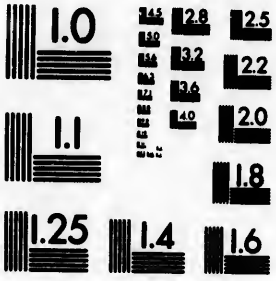


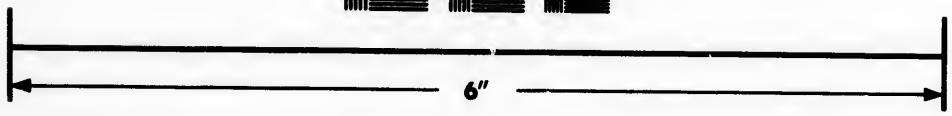



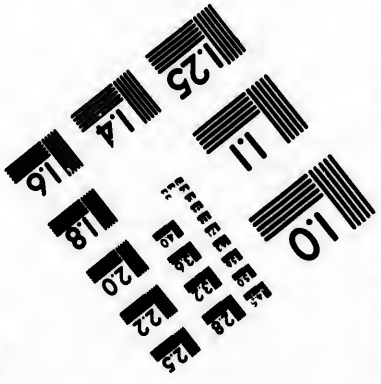


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# SPEECH

OF

# HON. ELIJAH WARD, OF NEW YORK,

ON THE

# IMPEACHMENT OF JUDGE WATROUS;

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, DECEMBER 14, 1858.

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WASHINGTON:
PRINTED AT THE OFFICE OF THE CONGRESSIONAL GLOBE.
1858.

# SPEECH.

The House having resumed the consideration of the resolutions reported by the Committee on the Judiciary, in reference to the impeachment of Judge Watrous—

Mr. WARD said:

Mr. SPEAKER: I approach this subject of the proposed impeachment of Judge Watrous with a due sense of its importance. I gave to the reports and evidence that consideration which was demanded by my duty as a legislator, during the *interim* between the sessions, to enable me to arrive at a just conclusion in determining my vote, but without any intention of takingpart in the discussion.

If the advocates of Judge Watrous had been content with their vindication of him from the charges preferred, I should have remained silent. But as some of them have thought proper to assail the accusers, I feel it my duty to address the House, for reasons that will appear in the course of my remarks.

Sir, no member has a higher respect for an independent judiciary than myself. I would do nothing to impair it; but I do not believe in that independence which is characterized by tyranny and oppression. I believe in that independence which is governed by an honest heart and an integrity of purpose, without fear or favor.

In no country is an independent and fearless judiciary more important than in ours. The peculiar structure of our Government, divided, as its functions are, into executive, legislative, and judicial, the latter assumes a high character and a position of vast importance. It may be said to stand between liberty and despotism, and is the great bulwark between legislative encroachment and the rights of the people.

If the Congress enact an unconstitutional law, the court can declare it void. This great power that it possesses, renders it necessary that the judiciary should not only be independent, but pure, honest, and without taint or suspicion.

I do not propose to follow the course of this debate into an extended investigation, or an analysis of the evidence against Judge Watrous. There are some points, however, in this proceeding for impeachment, to which I would invite the attention of the House.

I insist that we should hold the right of petition sacred, and that the exercise of this great republican privilege of the citizen should be treated with proper consideration by those who represent the rights and interests of the people.

It is not proper for a member of this honorable body to reproach any man for the exercise of this right. It is not for the House to go beyond the subject-matter of the petition, to assail the character and motives of the citizen who seeks to secure his rights, and invokes the constitutional power of Congress for the redress of grievances.

Sir, if the right of petition—if one of the most important guarantees of our liberties—is to be subverted, made a source of invective against the character and motives of citizens who approach Congress, in a proceeding of this nature, it is of but little benefit to the people.

For myself, I have been taught to regard the right of petition as one of the most sacred secured to us by the Constitution, and intimately connected with the liberties of the people; and I believe it is the duty of the House to consider the matter of the petition preferred, and the evidence adduced here for the impeachment of a Federal judge, solely on its merits, and with a view to determine the guilt or innocence of the accused merely; and not to permit the issue to be changed by an attempt to place his accusers on trial in his stead, by allowing their character to be assailed.

I have noticed, with regret, attempts made to draw the attention of the House from inquiries into the grounds for the impeachment of Judge Watrous, by attacks upon the motives of the memorialists, including the honor and integrity of the people of Texas who join in the desire for the trial of the accused. The memorialists seek, and properly applied for redress; and I do not wish that the attention of this House should be led away from inquiring into the grave charges made against a judicial officer of this Government. It must be borne in mind that it is Judge Watrous that is arraigned, and not Simon Mussina; it is his

official character that has to be pronounced upon, and this investigation should proceed upon its merits; the House must do its duty to the country, determining whether there is reasonable suspicion of the guilt of Judge Watrous, and if he is impeachable upon the allegations that have been standing against him the last ten years.

Let the House determine this question on the evidence, and the evidence alone. The dignity of the House forbids that it should descend to vituperate private and unaccused citizens, who have appealed here for redress of wrongs, and not for inquisition and judgment upon their motives.

From the course of a portion of this debate, we should suppose that Mr. Mussina was on his trial, instead of the real party.

The name of this gentleman has been drawn into this debate unjustly. He comes before this honorable body under a well-defined right, and is entitled to our protection.

The distinguished member from Tennessee, [Mr. Ready,] particularly, exhibited a prejudiced feeling in his remarks against the memorialist. He seems to regard it as a species of effrontery in him to ask for an investigation into Judge Watrous's conduct.

The House must be sensible that a great wrong has been done to the cause of justice in permitting the inquiry to be thus diverted from Judge Watrous, and that an equally great wrong has been committed towards Mr. Mussina, in allowing accusations, without evidence, to be made on the floor of this House against his character and motives.

Sir, I do not conceive that these proceedings furnish any occasion for going into an investigation of Mr. Mussina's claims to the respect, confidence, and good opinion of honorable members of this body.

In reply to the assaults upon his character, made on this floor without warrant and in language I deem not proper, on the part of the advocates of Judge Watrous, it is but just that I should say Mr. Mussina is a resident of the city of New York, which I have the honor in part to represent, where he has resided upwards of two years; and it is due to my convictions to add that from personal acquaintance with him, as well as from a knowledge of the part he has borne in this proceeding, I am persuaded of the integrity of his motives and the entire right he has, and the propriety of his conduct in asking the investigation of the conduct of an officer, who, he conceives, has oppressed, betrayed, and defrauded him.

I do not consider this a proper occasion to speak further on this subject, except to remind the House of the fact that Mr. Simon Mussina, the active prosecutor in this proceeding, is contending for the recovery of his own direct and personal rights in the Cavazos suit—he being jointly interested in the land transactions of his brother, against whom the judgment was rendered; and that the right and integrity of the proceeding he has instituted, for the punishment of the accused, has never before been questioned by any authority to which he has submitted his case. On the contrary, he has received the indorsement of public bodies, and a sovereign State has united in the prayer of his petition; and he stands to-day asking for justice, and justice only, from this honorable body.

In the proceedings of the Thirty-Fourth Congress it will be seen that the matter of Mr. Mussina's petition was made the subject of careful investigation, and that the Judiciary Committee unanimously indorsed it, granted his prayer, and recommended the impeachment of Judge Watrous, for high crimes committed in a series of acts of oppression and fraud upon the memorialists. The report of this committee states in a convenient and concise form the leading facts of Mr. Mussina's case, and I will read from it as far as it may be necessary for the House to be informed in this particular, in order to show the grounds upon which the committee unanimously determined the guilt of Judge Watrous and recommended his impeachment:

"The committee would, however, state very briefly the substance of the charges in the petitions, and the grounds upon which they have resolved to report the resolution. The complaints in the petition of Jacob Mussina, among others, are founded upon the conduct of Judge Watrous in a chancery suit litigated in his court at Galveston, and charge that throughout the progress of the case he was oppressive and partial; that he entirely disregarded the well-established rules of law and evidence, and the rights of litigants.

"The cause at Galveston was commenced by one Cavazos *et al. vs.* Stillman *et al.*, January 12, 1849, for partition among the complainants, of a large tract of land situated upon the east bank of the Rio Grande, which included the town of Brownsville, and to quiet the title as against the claim of those who were made defendants. The bill of complaint, which was verified by oath, alleged that all the complainants were citizens of the Republic of Mexico, and that the defendants were citizens of the State of Texas, which gave the United States court jurisdiction. Afterwards it appearing upon the report of a master that the suit was commenced by the attorneys of Cavazos without the knowledge or consent of several of the parties made complainants, the court ordered that the names of such parties should be struck out of the complaint and inserted as defendants, upon the agreement of an attorney to appear for them, and place upon the record in the cause, by answer or otherwise, such averments as would recognize the jurisdiction of the court, by acknowledging themselves citizens of the State of Texas, although it was well known that they were citizens of Mexico, and not of the State of Texas, and, although no notice had been given to any of such parties, one of them being a married woman, and another an infant for whom no guardian *ad litem* was ever appointed, their rights were finally passed upon in the decree in this irregular manner. These facts might not have been cause of serious complaint, if the judge, in the subsequent proceedings, had shown a disposition to administer justice with an even hand.

"The petitioner, Jacob Mussina, was not made a defendant in the cause until after these proceedings were had; but his interest afterwards, appearing by the affidavit of one of the defendants, although he was not a citizen of Texas, but a citizen of Louisiana, he was made a defendant by an amendment to the bill of complaint. The committee find that, during the progress of the cause, the well-established rules of law and evidence were repeatedly disregarded by the court, and in all cases in favor of the complainants and against the defendants. The testimony of interested witnesses was allowed against the objection of the defendants; and the deposition and affidavits of an attorney for the complainants were received in evidence, against the objection of the defendants, although it was shown by his own testimony that he was prosecuting the suit under an agreement of champerty—that is, he was to share in the proceeds of the sale of the property after it should have been recovered and sold.

"The court allowed the use of translations of important documents tending to prove the title of the complainants to the property in question, which had been made out by the

same attorney who was by agreement to share in the profits of the suit when the land should be recovered and sold, without acting under the sanctions of an oath, and without the translations being verified by oath. And the court also overruled the objection of the defendants to the use of such translations. There is some record testimony before the committee showing that these translations were false in some respects, without showing in what respects they were false.

"A short time previous to the January term of the district court of Galveston for 1852, Judge Watrous caused it to be understood by rumors, and by declarations given out by himself publicly, that he would not hold a January term at Galveston, which came to the knowledge of Jacob Mussina and prevented his attending that court, and taking such steps as might be necessary to secure the benefits of an appeal. But notwithstanding his declarations, he did hold the January term at Galveston, and rendered a decree in the said chancery cause, declaring the title of Mussina to the property in controversy to be null and void, and enjoining him forever from further asserting any claim to the same, remarking at the time that he had seen or conversed with the parties at Austin, and that they had consented to, or were satisfied with, the decree; which declaration of the judge prevented an attorney of Jacob Mussina, then happening to be in court, from taking the necessary steps for an appeal; whereas in truth and in fact, Judge Watrous had not seen or conversed with Jacob Mussina Galveston, or elsewhere, or any person representing his interest; and the pretense that he had consented to the decree, or was satisfied with it, was without foundation or excuse. Five of the eight complainants, who were material and necessary parties, had been made defendants in an early stage of the cause, and without any answer or allegations on their part, except two of them, a decree was rendered in their favor against Mussina; and to perfect an appeal, a notice should have been given in open court, at the time the decree was rendered, or, in case of appeal being taken afterwards, by the provisions of the twenty-second section of the judiciary act, the appellees must be served with a citation of appeal; and as one of the parties was a married woman, and another an infant, all of them residing out of the jurisdiction of our courts, being citizens of Mexico, it became very difficult, if not impossible, to perfect an appeal after the court had adjourned.

"It further appears, that afterwards, on or about the — day of January, 1854, Judge Watrous, upon the application of the solicitor of the complainants in the chancery cause at Galveston, cited said Jacob Mussina to appear in court at that place to answer for a contempt of court, in continuing to assert that he had an interest in the said property at Brownsville. The acts charged to be in contempt of court were, first, that he had commenced and prosecuted a suit in the city of New Orleans, against some of the parties and solicitors in the said case of Cavazos *et al. vs.* Stillman *et al.*, for conspiracy, in the proceedings in said case, to defraud and cheat, under color of legal proceedings, the said Jacob Mussina out of his interest in the property at Brownsville. The suit at New Orleans was commenced the year before the decree was pronounced at Galveston. That decree did not notice the suit at New Orleans, or in any manner enjoin it. The other act charged to be a contempt, was the filing of protests by said Mussina in the office of the Secretary of War and in the Quartermaster General's office, at Washington, against the payment of money by the Department to the successful litigants for the rent of the Brownsville property. The court declared Jacob Mussina to be in contempt, and issued an order for his arrest; and because he could not be found, not being a citizen of Texas, but a resident and citizen of Louisiana, an order was issued to sequestrate all his property. The committee deem the proceedings for a contempt to have been irregular, unjust, and illegal, and, taken in connection with the previous proceedings and rendition of the decree, oppressive and tyrannical.

"In the case of Cavazos *et al. vs.* Stillman *et al.*, the record affords sufficient evidence to satisfy the committee that there was collusion between the solicitors for the complainants and a part of the solicitors for the defendants, and that a part of the defendants, or one of them at least, Jacob Mussina, was defrauded and betrayed by such collusion. They would further state, that there is evidence to satisfy them that a part of the defendants were concerned in the conspiracy, and that the judge of the court knew of the collusion during the pendency of the suit, and that he alluded to a conversation between himself and one of the defendants' solicitors, who was concerned in the collusion, when he remarked that the defendants were reminded with the decree. The defendant Mussina commenced a suit at Galveston, against the other defendants and solicitors in the cause, on the 15th of March, 1850, for such conspiracy; but owing to continual obstacles and delays in the prosecution of that suit at Galveston, Mussina afterwards, but before the rendition of the decree in the chancery cause, commenced a suit against the same parties for the same cause at New Orleans, and Judge Watrous afterwards declared said Mussina to be in contempt for having commenced and prosecuted this suit at New Orleans, and ordered him to be imprisoned, and because he could not be found in the State of Texas, ordered his property to be sequestrated, as above stated.

"The committee have examined numerous records, consisting of pleadings, orders of court, affidavits, and depositions; and, after a patient and laborious research, they have reluctantly come to the conclusion that the conduct of Judge Watrous, in the cases above referred to, cannot be explained without supposing that he was actuated by other than upright and just motives; that in his disregard of the well-established rules of law and evidence, he has put in jeopardy and sacrificed the rights of litigants, and in acquiring a title to property in litigation, or held by adverse possession, he has given just cause of alarm to the citizens of Texas, for the safety of private rights and property, and of their public domain, and has debarred them from the rights of an impartial trial in the Federal courts of their own district. In view of the above-recited facts, and the conclusions of the committee, they report the evidence, and the following resolution:

"*Resolved*, That John C. Watrous, United States district judge for the district of Texas, be impeached of high crimes and misdemeanors."

It is especially to be remembered, Mr. Speaker, that this report is based entirely on record testimony. I desire to call the attention of the House especially and emphatically to this fact, and to the further and crowning fact that these records of Judge Watrous's court, on which all the material charges of Mussina were based, were before the committee of the present Congress, as likewise the parties who made them, and no attempt was made to impeach any one of them.

These same accusing records, on which the Judiciary Committee of the Thirty-Fourth Congress came to a unanimous judgment of the guilt of Judge Watrous, are before the House to-day as witnesses for his impeachment.

It is worthy of the observation of the House that the report of the committee of the last Congress, to which I have just referred, does not partake of the character of mere assertions or argument only, but rests upon a most careful examination of the evidence.

We find, in the abstract they have annexed to their report, which I make a part of my remarks, the date assigned and the page given for every material item of evidence in the case. (See Appendix No. 1.)

I would call the attention of the House to the approval which four members of the Judiciary Committee of this Congress have given to the judgment so deliberately made of Judge Watrous's official misconduct towards Mussina by the former committee of the Thirty-Fourth Congress. This approval comes to us with such authority and with such extraordinary evidences of truth as to constitute, in unbiased minds, a chain of evidence that leads irresistibly to the conviction of the guilt of Judge Watrous.

It is known that the present Judiciary Com-

mittee at the last session investigated the conduct of Judge Watrous with the greatest patience, and with an evident and earnest desire to arrive at the truth. For five months this investigation was steadily pursued; for a great part of this time the committee were in daily session occupying in their examination of witnesses aven the hours of the day when the House was sitting.

No circumstances were wanting, no pains were omitted, nothing was denied, to insure a full, impartial, and truthful investigation. Every opportunity of explanation and defense was afforded to Judge Watrous. He was indulged in a tedious defense by the committee; he had able counsel to conduct the investigation; and in a spirit of liberality, as I think, the committee went so far as to refuse to allow his witnesses to be impeached.

This, I say, sir, was undue liberality; for it enabled Judge Watrous to make a defense from the testimony of the officers of his court, and also the partners in his iniquity. But notwithstanding all these circumstances of advantage on the part of the judge, and after the most patient and comprehensive examination of all the facts, no matter how remote, in his favor, we find, sir, a portion of the committee affirming, in the strongest and most unreserved terms, the same judgment of his guilt that had first been pronounced, on the same charges which Mussina had submitted for investigation in the Thirty-Fourth Congress.

That judgment of censure and evidence of guilt is affirmed in the following clear and decided language. Summing up the proofs in the case, they say:

"Every irregular or wrongful decision of the judge was in favor of the complainants and against the defendant, Mussina, and those occupying a similar position, and was to their particular injury. By maintaining the proceeding as one rightfully brought on the chancery side of the court, these defendants were illegally deprived of their right to a trial by a jury, and were compelled to submit to an adjudication upon their rights to the property in such a manner that the decision would be final and conclusive as to the title of the property, instead of one upon the right of possession, which would at once have been pronounced, on the law side of the court, in an action of ejectment. By maintaining jurisdiction over the case, when a portion of the defendants as well as the plaintiffs were aliens, these defendants were deprived of their rights to have the questions involved in it decided by the courts of Texas, to whose jurisdiction they were rightfully amenable, and whose laws were to govern in that decision. By admitting incompetent witnesses to testify, their rights were affected by evidence given by persons who had an interest in the litigation adverse to theirs. And, finally, they were prevented from having the decision against them reviewed in the appellate court by the failure of the judge to perform his full duty to them in facilitating the exercise of the right of appeal, given to them by law, from motives of public policy, for their own private advantage, and that, too, when there is some reason to believe that the decree by the court is not in conformity with the principles of law, as recognized in Texas. Such a course of action, continued through the whole progress of a cause, in favor of some of the parties and against others, is, to our minds, conclusive evidence of the existence of a purpose, on the part of the judge, to favor one party, or set of parties, at the expense and to the injury of others, which is inconsistent with an upright, honest, and impartial discharge of the judicial function. And this, we believe, constitutes a breach of the 'good behavior' upon which, by the Constitution, the tenure of the judicial office is made to depend."

As to that portion of the charge assigned by Mussina, in relation to the judge's prosecution of him for alleged contempt, the report of the committee of this Congress, from which I have just read, also affirms the former investigation, to the effect that the action of the judge was tyrannical and oppressive. This matter, sir, of unauthorized, vexatious, and wrongful persecution of a citizen for alleged judicial contempt, is no light subject of complaint. It must be considered that in such a case there is no appeal to the Supreme Court; and a corrupt and malicious judge may practice his tyrannies with impunity, under disguise of such proceedings for contempt as were authorized by Judge Watrous in the case of Mussina, unless Congress, as it is now invoked to do, shall interfere to establish a precedent that shall hereafter check judicial tyranny.

In reference to the contempt case, the report already referred to as that of a portion of the present committee, says:

"It also seems clear, when the pleadings in the suit instituted by Mussina against Stillman, Belden and Ailing, and Basse and Hord, in the fourth district court of New Orleans, are considered, together with the judgment rendered in it upon the verdict of a jury, and the evidence in the contempt case, that there was no foundation whatever for the proceeding against him for a contempt, and that the action of the judge with respect to it was unauthorized by law, and was intended to be vexatious and oppressive. How any other conclusion can be arrived at, when it is remembered that the suit in New Orleans was instituted by Mussina against his co-defendants alone and their counsel, and related to rights growing out of their own transactions, it is not easy to conceive."

It appears that the report from which I have been reading is signed by the honorable members from Pennsylvania, [Mr. CHAPMAN,] Wisconsin, [Mr. BILLINGHURST,] Louisiana, [Mr. TAYLOR,] and Alabama, [Mr. HOUSTON,] gentlemen distinguished for legal learning and talents.

In addition to these two reports, the former made to the Thirty-Fourth Congress, and followed by the one just referred to, made at the last session, both adjudging the accused guilty of high crimes and misdemeanors, we have a copy of the resolutions of the Legislature of Texas, adopted in 1848, branding Judge Watrous with "one of the most stupendous frauds ever practiced upon any country or any people," and urgently requesting him to resign his office. This comes to us as an expression of the voice of Texas ten years ago. The same appeal lingers here for justice, and the resolution still stands unrepealed upon the statute-books of the State.

I will read the resolutions:

"Whereas it is believed that John C. Watrous, judge of the United States district court for the district of Texas, has, while seeking that important position, given legal opinions in causes and questions to be litigated hereafter, in which the interests of individuals and of the State are immensely involved, whereby it is believed he has disqualified the court in which he presides from trying such questions and causes, thereby rendering it necessary to transfer an indefinite and unknown number of suits hereafter to be commenced, to courts out of the State for trial; and whereas it is also believed that the said John C. Watrous has, while in office, aided and assisted certain individuals, if not directly interested himself, in an attempt to fasten upon this State one of the most stupendous frauds ever practiced upon any country or any people, the effect of which would be to rob Texas of millions of acres of her public domain, her only hope or resource for the payment of her public debt; and whereas his conduct in court and elsewhere, in derogation of his duty as a judge, has been marked by such prejudice and injustice towards the rights of the State and divers of

its citizens, as to show that he does not deserve the high station he occupies: Therefore,

"SECTION 1. *Be it resolved by the Legislature of the State of Texas*, That the said John C. Watrous be, and he is hereby, requested, in behalf of the people of the State, to resign his office of judge of said United States court for the district of Texas.

"SEC. 2. *Be it further resolved*, That the Governor forward the said John C. Watrous, under the seal of the State, a copy of the foregoing preamble and resolution; also, a copy to each of our Senators and Representatives in the Congress of the United States."

I read, also, the following resolution passed by the Senate of Texas, August, 1856, but at too late a period of the session to allow of its several readings in the House, previous to the adjournment:

"Whereas the Constitution of the United States provides that 'the judges, both of the supreme and inferior courts, shall hold their offices during *good* behavior;' that John C. Watrous being appointed judge of the United States district court for the States of Texas, before or during the month of May, 1846, and is still presiding over said court; and whereas an act of Congress was passed requiring said Watrous, judge, to reside in his district, thereby making known that he was a non-resident and stranger among the people over whom he presided as such judge, and an implied condemnation of his official behavior; and another act of Congress passed, which provided for the branching his court, thereby showing that it was intended to deprive him, as far as possible by legislation, of the means and facilities which he then and there possessed of accomplishing his wicked designs, and to weaken the unlawful combinations which he had then and there formed, and a joint resolution passed the Legislature of the State of Texas, enumerating very many sufficient causes, and requesting said Watrous to resign his said office, yet said judge holds on to his office with the tenacity of a convict felon holding to life, and adding insult to injury done the country, by procuring and publishing a certified character, obtained by him from the grand jury of his own court; and whereas charges were preferred against Watrous for his outrageous violation of law and his uniform course of bad behavior, and that said charges have been delayed and postponed by the contrivances of said Watrous, aided by his compeers, who, after defeating inquiry into his official misconduct, had the effrontery, by certificate statements, to undertake to whitewash a character blackened by deeds of crime; and whereas it is quite generally believed that in '*rich cases*' in his court, a party's success depends altogether upon his employing the favorites of said judge as the party's attorneys, and thereby secure the said judge's active cooperation in making up the case, his boasted control of his jury, and the final speech to said jury, wherein he fails not to use every argument, both false and sound, as occasion may require, to obtain the verdict; and whereas said judge is guilty of obtaining and attempting, by contriving and carrying on a made-up suit in his own court, to validate in the same over twelve hundred fraudulent land certificates, claimed by himself and his 'compeers,' and of a class—in all the enormous amount of twenty-four million three hundred and thirty-one thousand seven hundred and sixty-four acres—of fraudulent certificates, thereby attempting to deprive his country of a vast domain, besides causing the State the cost of additional counsel in defending herself against such enormous preconcerted spoliations; and whereas, on discovery of his interest in said class of certificates being made, said judge transferred said suit for determination to the United States court in another State, after shaping the case and influencing that court in such a manner as to obtain his desired judgment; and whereas said judge, since his appointment, has interested himself in a class of eleven-league land claims, which class of claims cover millions of acres of the best lands of the State, generally regarded as invalid, and his vast interest in sustaining said class of claims, and means of accomplishing his purpose, owing to his station and influences with the officials and juries of his court, render him obnoxious and dangerous to the general welfare of the people; and whereas it is believed by very many good citizens that said Watrous, in connection with one Thomas League, and other '*compeers*,' are directly or indirectly interested in most of the important suits brought in his court; and whereas it is believed that said Watrous is now in Mexico, engaged in procuring more of that class of land claims, in order to enrich himself and his 'compeers' at the expense of his country; and whereas the interests and feelings of said Watrous are wholly antagonistic to the interests and feelings of the people over whom he so disgracefully presides; and whereas the period of his administration has been marked by a series of acts of partialities, oppressions, speculations, and frauds, which render him odious and abhorred in the sight of all good citizens: Therefore,

"*Be it resolved*, That our Representatives in Congress are requested, and our Senators are instructed, to use every legitimate means in their power to procure the removal of said John C. Watrous from said office."

I wish the House most seriously to consider whether this array of verdicts against Judge Watrous, pronounced in the most deliberate manner, and under the most imposing circumstances, by public bodies, does not peremptorily call for a full investigation of the case by regular and final trial at the bar of the Senate. It will be recollected also that a resolution of the Texas Legislature was presented at the last session, requesting this honorable body to investigate the official misconduct of Judge Watrous.

Sir, in arriving at the conclusion that the interests of public justice and the peculiar duty of the House, in a proceeding of this nature, require that Judge Watrous should be committed for trial before the Senate of the United States, I have not neglected to examine all the defenses and evidence urged in his behalf. I have sought to do full and impartial justice to the accused, to the extent of my ability to judge between truth and falsehood, right and wrong. I have not omitted to examine the report emanating from a minority of the committee and made in his defense, and which is indorsed by my colleague, [Mr. CLARK,] a member of the Judiciary Committee, who has urged the exculpation of the judge in a forcible speech.

I examined that report, sir, with some anxiety to discover in it some ground, some recital of evidence, or some circumstance to excuse Judge Watrous, or to justify a charitable doubt, which I should have been glad to entertain, of his guilt. But I found that it amounted to nothing more than a broad assertion of the judge's innocence, slighting the evidence, and even failing, on its own showing, to examine into a portion of the charges.

I would direct the attention of the House to an instance of omission in this minority report to inquire into the merits of an act of Judge Watrous which was particularly complained of, and which was strongly censured by the unanimous voice of the Judiciary Committee of the Thirty-Fourth Congress and by a portion of the present committee. This instance of omission may well serve to illustrate the want of proper consideration of a material part of the charge. Referring to the process of contempt issued against Mussina, the signers of the report declare:

"If it had been followed by actual arrest of person or sequestration of property, the undersigned, out of tender regard for the rights of the citizen, might be disposed to inquire into its merits with care."

What a strange avowal is this to make! The merits of the contempt case have not been inquired into with care, because the executive officer of Judge Watrous's court failed to capture the victim

and despoil him of his property. Was it less unjust, less unauthorized by law, less criminal in the judge to issue writs of arrest and sequestration from the fact that they happened to be returned unsatisfied? His offense was the same, whether the writs accomplished his objects or not. He violated law, abused his power, and prostituted his court to private malice and cupidity; and for this, it might be supposed, a Federal judge would be held answerable to the offended and outraged laws of his country. But no; the signers of the report would not even inquire into the conduct with care, because the poor hunted victim of judicial tyranny had got, for the time, beyond the reach of his persecutors. It must be remembered, too, that these tyrannical writs still hang over Jacob Mussina, who, a citizen and resident of New Orleans, cannot venture his person or property in the adjoining State of Texas without incurring the risk of the execution of the tyrannical sentence of Judge Watrous.

In what a position does this circumstance place the contempt case, so slightly and carelessly dismissed by the honorable gentlemen who have subscribed the judgment "full and entire acquittal" of the accused! Here is a citizen of Louisiana prevented from entering the borders of Texas, disqualified from holding property there, and actually forbid to go into a State of the Union; and yet we are told by this branch of the Judiciary Committee which exculpate Judge Watrous, that "there is nothing in it deserving the attention of the House."

I do not consider it necessary, Mr. Speaker, after pointing out this instance of failure of duty and disregard of right and justice in the minority report, to establish by further and detailed criticism its unreliability. I do not consider it necessary to indicate further the absence of a full and proper consideration of the points involved. They are sufficiently obvious from the judgment and temper manifested in excusing and protecting the tyranny of Judge Watrous, because his malice had fallen somewhat short of its aim.

But, sir, before dismissing this report, I cannot refrain from offering some general remarks on the visionary suggestions it makes, that "there is nothing in the affair but the resentfulness of disappointed litigants;" meaning, I suppose, Mussina and Spencer, who had preferred distinct accusations against Judge Watrous. Sir, the idea is simply preposterous that private citizens, from mere "resentfulness," should subject themselves to years of toil and harassment, and to an enormous expense, in order to bring a judge to a trial if it could only result in his full and entire acquittal! It is entirely improbable that any man of common prudence would, merely to gratify bad passions, undertake the impeachment of a judge, and follow it up through all the tedium, difficulty, odium, and expense, that he must necessarily encounter in bringing him to the high judicature of the United States Senate, with a conviction that an acquittal must eventually be pronounced in favor of the accused.

It should be considered to what pains and hazards a party subjects himself in taking ground against a United States judge in seeking his impeachment if this judge should be really innocent. Charges of judicial corruption are not likely to be made, at least not likely to be followed up with real zeal, regardless of time and expense, and through all the difficulties that the official and his surroundings may throw in the path of justice, merely from personal spite, and without any foundation in fact. I think that it is quite improbable that a judge could be persecuted to this extent by resentful suitors in his court; and I may say further, that it is not probable such a motive of private malice could originate a proceeding against Judge Watrous, the truth and justice of which have been affirmed in most of the preliminary investigations of the case made by public authority.

These investigations have covered the whole ground of the judge's official misconduct, and not only on charges to which I have referred in these remarks, but in numerous and multifarious charges of other acts of judicial corruption he is deemed guilty, and in consequence of which he has become repulsive to the people of his district, who now, in conjunction with the memorialists, seek the interposition of this honorable body.

The limited time allowed to me under the rules of the House for this discussion, does not permit me to enter at any length into the land frauds and land speculations which Judge Watrous is charged with.

But gentlemen who have preceded me in this debate have sufficiently informed the House of the material facts on which the charge of Eliphas Spencer is preferred in accusing the judge of corruptly lending his court to sustain his own title to a grant of land, and of complicity in the procurement of an alleged forged power of attorney, upon which his title wholly depends. I cannot now do more, for want of time, than to refer generally to these important and apparently sustained charges, and to invite a careful attention to the majority report of the committee on this important point.

I would invite the attention of the House to the character of the testimony by which it has been sought to absolve Judge Watrous. It appears that there were brought here a number of friendly and interested witnesses to give evidence in favor of Judge Watrous, consisting of the officers of his court, Love, Cleveland, Jones, Shearer, his agent, John Treanor, and of his partners in alleged land speculations, League, Lapsley, Frow, and others. The Judiciary Committee refused to allow these witnesses to be impeached, but I beg the House to examine their testimony with just suspicion. Numerous contradictions appear. You will see evidence of collusion; you will notice Judge Watrous refreshing the recollections of these witnesses, (see Appendix No. 2,) and the variance in their testimony from day to day, to suit his case. You can then give proper credit to men naturally prejudiced in favor of the accused and interested in his crimes.

Mr. Speaker, in conclusion let me indulge the hope that this House will not hesitate to execute the high duty it owes to the country in subjecting

to trial before the Senate of the United States a judge who stands before us charged with high crimes and misdemeanors, which lessen the high character of, and our respect for, the bench. This impeachment is due to the dignity and purity of judicial position, to the people of Texas—to the memorialist whose rights have been trampled upon, and to the country; and more than all, it is due to the accused that he should vindicate himself before the high court of impeachment, that if innocent he may be acquitted. Until that is done, his usefulness as a judge is gone, his honor tarnished, and his integrity impeached.

The House may refuse to put him upon his trial, but it cannot obliterate the record of his alleged crimes and misdemeanors, nor remove the stigma under which he rests; nor will such a vote restore the confidence of the people of his own district or the country.

[APPENDIX No. 1.

*Abstract of testimony referred to in Report of Committee of the Thirty-Fourth Congress.*

In the Cavazos case, suit was instituted January 12, 1849, by E. Allen and William G. Hale, solicitors, claiming to represent eight citizens of Mexico, against citizens of Texas, thus giving the United States courts jurisdiction, (p. 15.)

Motions to dismiss the bill of complaint as to five of the complainants, as having been filed by the said Allen and Hale without authority, (p. 35.)

Motion to dismiss, referred to a master in chancery, who, after citing and hearing the parties, reported that no authority to commence the suit on the part of five of the complainants had been shown, (p. 37.)

The motion to dismiss ostensibly sustained, but in effect only so far as to strike the names of such five complainants, sworn citizens of Mexico, from the bill of complaint, and without any motion, leave was granted to the remaining three complainants to amend the bill, by making defendants the said parties thus stricken from the bill; and without any process or notice to them, it is entered of record by the court, in the same entry, that the said parties appearing in open court, by an attorney in fact, did agree to place upon the record, by answer or otherwise, an acknowledgment that they were citizens of the State of Texas, to give the court jurisdiction, (p. 48.) One of the parties, Ramon Lafon, was an infant, and another, Angela Garcia de Tarnava, a married woman; neither could make a binding agreement, even in open court, (p. 95.) The following is the order referred to:

"ORDER.—*June* 30, 1849.

"RAPHAEL GARCIA CAVAZOS and others } vs. "CHARLES STILLMAN and others. }

"Upon consideration of the motion made by Elisha Basse and Robert H. Hord, counsel for Don Constantino Tarnava, Doña Angela Garcia Lafon de Tarnava, his wife, Don Ramon Lafon, Don Manuel Prieto, and Doña Feliciana Goseascoche de Tigerina, made parties complainant in the bill of complaint in this cause; and upon further consideration of the several affidavits filed in respect to the said motion and the said bill of complaint, and the argument of counsel, it is now hereby ordered that the said motion be sustained, and that the other parties complainant in the said bill named have leave to amend the said bill by making the abovenamed parties complainant defendants to the said bill; and they, the said parties, so to be made defendants, now appearing by R. H. Hord, their attorney in fact, in open court, do agree that, being so made parties defendant, they will place upon the record in this cause, by answer or otherwise, such averments as will recognize the jurisdiction of this court, by acknowledging themselves citizens of this State for the purposes of this action, and the costs already incurred and the liabilities accrued to be borne by the parties remaining complainants."

Jacob Mussina's interest appeared by affidavit of S. A. Belden, (p. 42.) Bill amended, making him, as a citizen of Texas, a party defendant, July 7, 1849, (p. 49.) Filed his answer, which was under oath, and in said answer set forth that he was a citizen of Louisiana, (p. 50.)

Motion of defendants to exclude all packages of depositions, exhibits, transcripts of any sort and description whatsoever, dependent for their admission upon the depositions or affidavits of William G. Hale, Esq., one of the solicitors of the complainants, on account of his interest, (p. 113;) overruled, (p. 118.)

Cross-interrogatories and answers of William G. Hale as to his interest, (pp. 120, 123, 124, 125,) wherein he admits that he held a deed for part of the property in litigation, and that he and his partner were to share in the proceeds of the sale of the property when recovered.

*Extract from answer of William G. Hale, (page 134.)*

"Some time after making of the original agreement, and after the commencement of this cause, the complainants executed conveyances to Mr. Allen and myself of a certain undivided portion of their distributive shares of the tract of land mentioned in the bill, but these conveyances were not to be considered as delivered, so as to vest any interest or legal fee in us, until the termination of the suits before stated; and they were not, in any event, to inure to our benefit, so as to entitle us or to give us an interest in the land, including the town sites before stated. The conveyances were intended as a security for our protection, and to give us a lien or power to enforce the agreement before mentioned, and were so stipulated for in the original agreement itself.

"In answer to the second cross-interrogatory, I refer to my former answer, and distinctly say, that I shall not receive, in consequence of the agreement referred to, any greater compensation, in the event the complainants recover, than if the defendants prevail, except in so far as my partner and myself will then have done a part of what we undertook to do, and will consequently have less labor before us; whether we shall make anything in addition to the amount already paid us by our clients, will depend entirely upon the successful issue of the other suits to be commenced, as well as of this, and the further sale of the land so recovered.

"In answer to the third cross-interrogatory, I refer to my foregoing answers. As to the land, including the town site of Brownsville, I have already said that I am not, by any agreement, to have any portion of said land, in any event, nor any interest in such land, but only a portion of the proceeds of sale, should the same be finally recovered and sold."

William G. Hale's deposition, read in support of the title of the complainants, (p. 135,) and he was received as a general witness throughout the progress of the cause. (See pp. 65, 71, 88, 89, 90, 110, 111, 117, 140, 145, 146, 147, 148, 149, 150, 151.)

See also his affidavits in law case 134—the same title being in issue, and same counsel, (pp. 635, 655, 656, 657, 659;) also, contempt case, (p. 337.)

The principal part of the documentary evidence of the complainants consisted in what purported to be translations from the Spanish. These translations were made by William G. Hale, Esq., and not sworn to, as shown in the objections and exceptions of the defendants, which were overruled, (pp. 109, 110, 153.) Translations were in some respects false, (p. 660.)

See exceptions of Jacob Mussina, (pp. 95, 108, 109, 114;) overruled, (pp. 215, 218.) See, also, p. 317.

The court permitted Robert H. Hord, counsel for defendants and witness covertly interested, to testify at the hearing of said cause, and sustained his refusal to answer the following proper and legal question, intended to show that he had a collusive interest adverse to Jacob Mussina:

"The solicitors of Jacob Mussina put the following question to Mr. Hord:

"'Have you, or have you not, any understanding or agreement with the complainants, or either of them, or their agent or solicitor, in relation to the determination or settlement of this cause, or of any of the matters involved therein, adverse to any interest or right claimed by Jacob Mussina, in any property or rights involved in this suit? Are you or not interested in any such understanding or agreement?"

"Which question Mr. Hord declined to answer; and thereupon the court decided that the question need not be answered.

"And thereupon the said Robert H. Hord, being sworn in chief by the court, deposed and said as follows."

Hord's testimony taken by leave of the court in support

of the title of complainants, (p. 137,) objected to on account of the interest of said Hord, (p. 137.)

Affidavit: R. H. Hord, solicitor for defendants, in support of the testimony of William G. Hale, solicitor for the complainants, (p. 119.)

The decree (p. 119) covers a much larger tract of land than the grant relied upon in evidence, and adopts different and more extended boundaries than those described in the grant and included in the testimony explaining the surveys made by the holders of the grant, (pp. 160, 163, 171, 156.)

Judge Watrous caused it to be understood, by declaration given out by himself publicly, that he would not hold a January term at Galveston. (See report, p. 2; see depositions, M. M. Potter, D. D. Atchison, F. H. Merriman, B. C. Franklin, and John S. Jones, pp. 180, 181, 183, 185, 187, 190, and 195; interrogatories, 11, 14, and 16, and answers thereto.)

Transcript, chancery docket, January term, 1852, showing that there was no other chancery business done at said term, (p. 188.)

November 1, 1851, Jacob Mussina instituted a suit in the court of his domicile—New Orleans—against William Alling, Charles Stillman, Samuel A. Belden, Elisha Basse, and Robert H. Hord, among other things for a conspiracy in the Cavazos cause to defraud and cheat, under color of legal proceedings, the said Jacob Mussina out of his interest in the property at Brownsville. For a full transcript of all the proceedings and testimony in that suit, see pages 418 to 868 inclusive. This suit resulted in the following verdict, rendered May 21, 1853, and which verdict was a virtual finding of guilty as charged, except as to Stillman, on whom service was not had.

Jury.—P. A. Giraud, John E. Currin, A. David, J. Calder, J. A. Lum, Robert Henderson, S. L. Fowler, Dennis Fulvey, W. K. Day, S. E. Moore, Amilcar Roux, A. Durand.

*Verdict and Judgment, 21st May, 1853.*

Jacob Mussina
vs. } $4,726.
William Alling *et al.*

This cause, continued from yesterday, came on again today.

Roselius and Wolfe & Singleton, Esqs., for plaintiff, Bonford & Finney and H. D. Ogden, Esqs., for defendants.

When the jury sworn in, having come into court, were called, and after receiving a written charge from the court, the jury retired to deliberate on the verdict; and after deliberation they returned into court and delivered the following verdict, to wit:

"We, the jury, find that the defendants shall convey unto Jacob Mussina, the plaintiff, by good and sufficient title, all the rights of property acquired by Basse and Hord, under the transfer of conveyance of the 14th December, 1849, and 31st January, 1850, within ninety days from the date hereof, and that Elisha Basse, R. H. Hord, S. A. Belden, and W. Alling pay to the plaintiff the sum of $25,000 damages.

"We, the jury, further find, that S. A. Belden and W. Alling convey to J. Mussina the property purchased by them from Basse and Hord, on the 5th January 1851; and on the said defendants complying with the above, the said plaintiff shall refund the said amounts advanced by the defendants for the purchase of the property; and in default of the defendants making the above conveyances within ninety days, we, the jury, find a verdict in favor of the plaintiff, J. Mussina, for the sum of $214,000, in lieu of the title to the property. S. L. FOWLER, *Foreman.*

"New Orleans, *May* 21, 1853."

Judgment was afterwards rendered upon this verdict in accordance with its terms. The defendants appealed to the supreme court. The judgment was set aside by the supreme court for want of jurisdiction in the court below.

The proofs that Judge Watrous had knowledge of the conspiracy between the solicitors for the complainants, and part of the solicitors for defendants, also part of the defendants, to defraud Jacob Mussina, are as follows: Jacob Mussina commenced suit against the conspirators, Hord and others, in the United States court, at Galveston, March, 1850, (p. 475;) the admission of Hale, solicitor for the complainants, of his interest in the subject-matter of the suit, (p. 133;) the question to Hord as to his complication in the conspiracy, and his refusal to answer sustained by Judge Watrous, March, 1851, (p. 138;) the reception of the testimony of Hale and Hord, and his declaration that he had seen the parties, and that they were satisfied, (pp. 183, 185, 192.)

Motion for a rule on Jacob Mussina to answer for a contempt of court, January 4, 1854, (p. 236;) served upon Jacob Mussina, at New Orleans, January 18, to appear February 1. The service was less than twenty days before the next rule day—1st February—and out of the State of Texas. Jacob Mussina, by counsel, January 31, petitioned the court for further time to answer, under the rule allowing time until the next rule day, March 1, in cases where the service was less than twenty days, (p. ——.) This petition was overruled; but the rule to show cause, &c., was extended until February 18, (p. 258.) On the 15th February, he filed exceptions to the jurisdiction of the court, as follows, (p. 259:)

"District Court of the United States,
"*District of Texas, at Galveston.*

"Between Raphael Garcia Cavazos *et al.*, complainants, and Charles Stillman *et al.*, defendants. In chancery, No. 41.

"And now comes Jacob Mussina by his solicitor, and appearing for the purposes herein set forth, respectfully submits to this honorable court whether he ought, or is bound to appear and answer the rule to show cause why a peremptory attachment should not issue against him, &c.—1. Because no copy of the motion and exhibits, upon which said rule was granted, was ever served on him. 2. Because the said Jacob Mussina was, at the time of the filing of the original bill of complainants, and is now, a citizen of the State of Louisiana, and not within the jurisdiction of this honorable court. 3. That this court has no power to issue process, to be served upon parties who are, and always have been, beyond its jurisdiction; and for other causes, &c.; and he refers to the various papers in the cause in support hereof, &c. JACOB MUSSINA.

"*By his Solicitor*, DANL. D. ATCHINSON."

Jacob Mussina, to protect his property in Texas, filed his answer, and purged himself of the alleged contempt. The following is the first part of his answer, (p. 259:)

"This respondent, Jacob Mussina protesting that he ought not to be called upon to answer said rule, because he has not been served with the —— motion, with the exhibits referred to therein, upon which the same was granted, and that the said motion, exhibits, and rule are wholly insufficient in law, without waiving any benefit that may or might be taken by exception to the manifest error and imperfections thereof, for answer unto said rule, says, that he has never, knowingly or intentionally, treated with disrespect the laws, or any of the tribunals of the United States; and that it has always been his wish and purpose to show a becoming respect to the laws, and to all the tribunals of the United States; and that he has never intended to violate, or attempted to violate, the injunction of this honorable court.

"And being satisfied that there can be no contempt when none was intended, and not being aware that there has been any disobedience to the injunction, he denies that he has in any way been guilty of any contempt to, or disobedience of, said injunction since the same was served on him, about May, 1852."

He also insists that he was not prosecuting the suit at New Orleans when the rule was served upon him, but was defending, as appellee, in the supreme court. He insists that, having been made the victim of a conspiracy in the suit at Galveston, as is evidenced by the verdict of a jury, and the judgment of a court thereupon, which verdict and judgment he made a part of his answer, it was not competent for the United States court in Texas to prohibit him from prosecuting the conspirators in the courts of the State of his residence. Particular attention to the whole of the answer and exhibits is requested by the committee.

February 24, 1854.—Court decided that Jacob Mussina was guilty of a contempt, as charged, (p. 337.)

February 25, 1854.—Attachment issued, (p. 338.)

*Marshal's Return.*

Received February 25, 1854; and having made diligent inquiry, I find that Jacob Mussina is, and has been, for many years past, a resident of the city of New Orleans, State of Louisiana, and is not at present, nor has been,

within my district. I therefore return this writ not executed, he being not found in my district.

BENJAMIN McCULLOCH,
*United States Marshal.*

By E. T. AUSTIN, *Deputy.*

GALVESTON, *February* 27, 1854, (p. 339.)

*Motion for sequestration against Jacob Mussina, filed February 28, 1854.*

And afterwards, to wit, on the 16th day of March, of the same year, the court here made an order, which is in the words and of the tenor following, to wit:

"*Order.*

"MARIA JOSEFA CAVAROS and another }
vs. }
"CHARLES STILLMAN and others. }

"The motion of the complainants in the above-entitled cause for a writ of sequestration against Jacob Mussina, one of the defendants, filed on the 28th day of February, 1854, having been heard at a former day of this term, and the court having then taken time to consider the same, and being now fully advised, and it appearing to the court that the writ of attachment heretofore issued has been returned not found, it is now ordered by the court that a commission or writ of sequestration, in due form, at once issue to Israel B. Bigelow and E. D. Koffman, of the county of Cameron, and William G. Webb, of the county of Fayette, in this State and district, as commissioners, empowering and directing them, or any of them, to enter upon the messuages, lands, tenements, and real estate of the said Jacob Mussina, and collect, receive, and sequester, not only the rents and profits of his real estate, but also his goods, chattels, and personal estate, and to retain and keep the same under sequestration in their hands until the said Jacob Mussina shall clear his contempt, and this court make other order to the contrary."

And afterwards, to wit, on the 23d day of March, of the same year, a writ of sequestration was issued from the clerk's office of our said court.

It appears that Spencer settled upon what he supposed to be public domain of Texas, November 25, 1847, (p. 350.)

Suit was commenced against him at Galveston by Lapsley, January, 1851, (p. 347;) afterwards it seems to have been removed to Austin, (p. 352,) and remained pending in the district court of Texas until November, 1854, (p. 350.)

Transferred by order of the court to the United States circuit court, eastern district of Louisiana, on account of the interest of the judge in the land in controversy, (p. 352.)

Spencer would have pleaded the interest of the judge as matter in abatement, but did not know of such interest when he filed his answer, (pp. 355, 356.)

Numerous other land suits were transferred to the United States circuit court in Louisiana for the same cause, (p. 380.)

The deed of Williams and Menard, trustees of Sophia St. John, for the land in controversy, to Thomas M. League, bears date July 1, 1850, (p. 393.)

League to Lapsley, same day, (p. 398;) see the answer and affidavit of Spencer, (p. 355.)

By tracing the title set up to the land in question by Lapsley, (as shown upon pp. 393, 394, 395, 396, 397, 398, 399,) we conclude that the interest of Judge Watrous, referred to in the order, was acquired in 1850.

The title claimed by Lapsley in the land in controversy originated in three eleven-league grants, made by the Mexican States of Coahuila and Texas, to three persons in severalty. (See p. 388 *et seq.*, and p. 401 *et seq.*)

By the record of the verdict and judgment in the case of Ufford *vs.* Dykes *et al.*, (p. 406;) and the bill of exceptions, (p. 410;) and the testimony of Williams, (pp. 407, 408, 409, 410, 411, 412, 413;) and the opinion of the court, (p. 114,) it appeared that Judge Watrous tried certain cases, and pronounced judgment therein, involving a claim to land depending upon the same title as the land included in the suits transferred to the United States court, in Louisiana, on account of his interest, after the change of venue in the Spencer case.

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APPENDIX No. 2.

The following passages of testimony of Judge Watrous's witnesses are taken as examples, to show the effect of their having their recollections refreshed by the judge on their examination by the committee:

*Testimony of J. W. Lapsley.*

"*Question*, (by Mr. EVANS.) Since you gave your testimony on the first day of your examination, have you not had frequent conversations, on the subject of your testimony, with Judge Watrous and his counsel, Judge Hughes?

"*Answer.* I have had repeated conversations with those gentlemen in relation to the subjects about which I have been testifying.

"*Question.* Were not some of the explanations, qualifications, and alterations in your testimony made at the suggestion of Judge Watrous or Judge Hughes, or suggested by one or both of them?

"*Answer.* I will state this: that in my testimony the first day I was examined about a number of matters which appeared to me to be immaterial, and I spoke without very much reflection, when the testimony came to be read over, I found I had not been as definite as I desired to be when I ascertained that some portions of my testimony might be regarded as material. On conversing with Judge Hughes and Judge Watrous, after my testimony was taken down, and on my attention being called to one or two matters as to which it was desired that I should be more definite, I reflected on the subject, and I came to the conclusion that it was proper that I should speak more definitely. It was desired that I should be as definite as my recollection would enable me to be. The matter I now refer to, particularly, is in regard to what transpired at Selma at the time of the contract; but the larger portion of the corrections were made by me without any suggestion from either of these gentlemen, merely for the purpose of rendering my testimony as accurate as practicable.

"*Question*, (by Judge Watrous.) Have you made any part of your deposition or statements on suggestions made by me or Judge Hughes, or in consequence of anything either of us has said to you?

"*Answer.* No, sir; except so far as my recollection was refreshed by the conversations."—*Testimony*, p. 158?

*Testimony of James Love.*

"*Question.* Have you conversed with Judge Watrous since the adjournment yesterday, in regard to the matter of this rehearing?

"*Answer.* I conversed with him about nothing with regard to the rehearing whatever.

"*Question.* Have you conversed with him at all in relation to the testimony you gave yesterday?

"*Answer.* I did.

"*Question.* As to what point?

"*Answer.* Simply as to the point that he misunderstood my testimony yesterday. I approached him and said, 'I do not wish to talk with you as a witness at all.' He repeated that; 'and,' said he, 'you may talk to anybody else you please, but I will not hear you.' He stayed in the room a few minutes, and I spoke to others about it. He made no reply, except to say that he thought I was mistaken in what I stated yesterday; that is, that my version of it was not exactly correct. Mr. Cushing was present when I addressed the judge, and both of them said they would not hear me."—*Testimony*, p. 365.

"*Question*, (by Mr. CHAPMAN.) What portion of your testimony yesterday was it that Judge Watrous referred to when he said your recollection was erroneous, or your statement was not correct?

"*Answer.* I had designated the names of divers lawyers, who had appeared for Mr. Mussina, and had said that Mr. Hord, and Mr. Potter, and Mr. Merriman, and Mr. Hartley, and Atchison, were the counsel for Mussina; and I said that I thought Atchison was perhaps in court at the time attending to the case; Judge Watrous said no; that Mr. Atchison did not attend to it at all. That was one point.

"*Question*, (by Mr. BILLINGHURST.) Did he suggest who did attend to it?

"*Answer.* No, sir; he did not say anything in my presence then. I heard him say this morning, in conversation with another, Mr. Howard I think, that Mr. Potter attended to it; but he did not say so to me then.

"*Question*, (by Mr. CHAPMAN.) You were going to state another point; what was it?

"*Answer.* It was in regard to my testimony as to Mr. Atchison's conversation with my son. I still adhere to

what I said, although his recollection differs from mine. I had said that I understood from my son that Mr. Atchison presented the petition to Judge Watrous in his chamber. He said that it had not been presented at all, and that I had misconceived what my son had told me in relation to the facts. I gave my understanding of what it was, and I retain that recollection yet."—*Testimony*, p. 368.

**A few of the many contradictory statements of J. A. H. Cleveland, the deputy marshal of Judge Watrous's court, are placed in juxtaposition to show how the testimony of this witness has varied on the different days of his examination before the committee, showing also a refreshment of his recollection by the judge:**

*Testimony of J. A. H. Cleveland, as to the occurrence in court about Mr. Atchison's taking an appeal in the Cavazos case.*

On examination, April 29.

"*Question*, (by Mr. CLARK.) Then I do not want that I only want what was done in open court, or what Judge Watrous heard. What was said about taking an appeal?

"*Answer*. Judge Watrous directed me——

"*Question*. In open court?

"*Answer*. Yes.

"*Question*. In the presence of Atchison?

"*Answer*. No, sir. Mr. Atchison had quit the court-house, very angry.

"*Question*. Did he say, when he quitted the court-house, that he had abandoned the case?

"*Answer*. No, sir; I do not recollect; he was in a bad humor generally.

"*Question*. And he left the court?

"*Answer*. He left the court.

"*Question*. After he left the court, what did Judge Watrous say?

"*Answer*. After he left the court, Judge Watrous ordered me—I was then a deputy marshal, and in attendance on the court—to appoint a bailiff, and keep him in the court-house for the purpose of letting him know if Mr. Atchison came in, and to keep the court open until the time of the starting of the boat for Brownsville, where he was going to hold his next term. In place of putting a bailiff in court, I remained there myself, and stayed there until twelve o'clock each night.

"*Question*. What day was that?

"*Answer*. That was the 16th and 17th of January. The court adjourned at the time the bell was rung on board the boat for passengers to go on board.

"*Question*. The court adjourned the 17th of January, 1852?

"*Answer*. Yes.

"*Question*. When was it that Atchison left the court-room?

"*Answer*. On the morning of the 15th of January, 1852.

"*Question*. The decree was rendered on the 15th?

"*Answer*. Yes.

"*Question*. Was there any further business done after the decree was rendered?

"*Answer*. No further business was done, but to make up the minutes and sign them. That the judge did, and went from the court-house to the boat.

"*Question*. Was there any further business done between the 15th and 17th?

"*Answer*. I do not think there was.

"*Question*. Then the last business done was the rendition of the decree?

"*Answer*. I think so.

"*Question*. What time of the day was it on the 15th?

"*Answer*. I think the decree was rendered about eleven or twelve o'clock on the morning of the 15th. I kept the court open.

"*Question*. How late that day?

"*Answer*. Till about twelve o'clock that night.

"*Question*. And the next day?

"*Answer*. I went from the market-house, about day-light, to the court-house, and remained there that day until about twelve o'clock that night.

"*Question*. That was the 16th?

"*Answer*. Yes, sir.

"*Question*. Well, the 17th?

"*Answer*. About twelve o'clock, on the 17th, Judge Watrous left for Brownsville, on the boat.

"*Question*. When was Judge Watrous's court at Brownsville held?

"*Answer*. It was held in the month of January.

"*Question*. Then this keeping the court open after the business was done was all unusual.

"*Answer*. Yes; but the judge told me he wanted to afford Mr. Atchison an opportunity to take an appeal.

"*Question*. Did Atchison know that this was going on?

"*Answer*. I do not know; I think he did.

"*Question*. What makes you think he did?

"*Answer*. I asked Mr. Jones to tell him, and to say that I was tired remaining there.

"*Question*. Do you know, of your own knowledge, that Atchison knew it; had the judge informed Atchison, before he left the court in a pet, that he should keep the court open for the purpose of facilitating an appeal, or was this order made after Atchison had left; I want to see if Atchison knew it; did Atchison come in there at all?

"*Answer*. No, sir; he never came.

"*Question*. Was there a pretty full attendance of the bar, at the time that Judge Watrous told you to keep the court open?

"*Answer*. I do not think there were a great many lawyers in the room; I am certain, though, there were some.

"*Question*. Do you know of any fact that would tend to satisfy us on the point, whether Atchison knew of Judge Watrous's keeping the court open?

"*Answer*. Nothing more, than that I myself sent Atchison word by Jones, the deputy clerk.

"*Question*. But no step was taken further?

"*Answer*. I did not feel bound to follow Mr. Atchison.

"*Question*. You sent Jones after him?

"*Answer*. I did that as a matter of accommodation. I wanted to get rid of sitting there day and night.

"*Question*. Where was Judge Watrous these two days?

"*Answer*. In the office, adjoining the court. He directed me to come to him, if Atchison came in.

"*Question*. Before Atchison left the court was anything said by Atchison or by the judge about an appeal at all?

"*Answer*. I do not recollect."—Pages 161, 162, 163, 184, 185.

On examination, May 1.—J. A. H. Cleveland examined by Mr. Cushing, counsel for Judge Watrous.

"*Question*. You have stated that, after the complaints by Mr. Atchison in court, on the rendition of Judge Watrous's decision in Cavazos *vs.* Shannon, the judge ordered the court to be kept open to receive an appeal. Was that order given before or after Mr. Atchison left court?

"*Answer*. I was mistaken, the other day, about that. On reflection, and on thinking a good deal about it, I recollect pretty much what occurred in court. The order was made in Mr. Atchison's hearing, just as he was in the act of leaving court.

"*Question*. Do you recollect the words that Judge Watrous employed in making that order?

"*Answer*. I do, sir.

"*Question*. Please state them.

"*Answer*. At the close of the discussion between Mr. Atchison and the judge, Mr. Atchison was evidently angry, and replied in pretty harsh terms, as I stated, to the judge. The judge replied to him, 'I do not intend to be put in the wrong in this matter;' and he turned to me and said, 'Mr. Marshal, do you keep this court open as long as I can possibly remain here, for the purpose of letting Mr. Atchison take whatever course he pleases.' He turned away, with his hat in his hand, and left the court-room."—Page 158.

Cross-examined by Mr. EVANS.

"*Question*. You recollect I was quite particular in my inquiries as to the notice given in court as to keeping the court open for an appeal; whether Atchison had or had not left the court when that notice was given; have you had any conversation with any party on that point since?

"*Answer*. I have, sir; but it was in order to see whether I was right or not.

"*Question*. With whom?

"*Answer*. With Colonel Love, and with Judge Watrous, and with Mr. Shearer.

"*Question*. Did you travel to this city with Colonel Love?

"*Answer*. No; I came here alone. I came a different route from the other witnesses.

"*Question*. Did you have any conversation with Colonel Love, since you got here, as to the points you expected to prove?

"*Answer.* Only at the time I have stated. I wanted to recollect and state the thing as well as I could. That was my reason for inquiring and refreshing my memory.

"*Question,* (by Judge Watrous.) You spoke of having talked with me on this subject since the close of your testimony; did I approach you on the subject, or you me?

"*Answer.* I asked you; and I think I said——

[Question excluded.]—Page 680.

*Testimony of J. A. H. Cleveland, in relation to the nature of the interest disclosed by Judge Watrous in the Lapsley suits.*

On examination, April 29.

"*Question.* What was said in open court by the judge?

"*Answer.* The judge refused to make any order, as I tell you. He told him he would not. I recollect his expression very distinctly. It was rather a homely one. It was, that he would not touch it with a forty-foot pole.

"*Question.* He used that expression?

"*Answer.* Yes, sir, he did.

"*Question.* Did he say why he would not touch it with a forty-foot pole?

"*Answer.* He had disclosed his interest.

"*Question.* Did he say at that time what interest he had?

"*Answer.* I cannot distinctly state that. The record will show.

"*Question.* Do you recollect what the judge said in relation to his interest, if he had any; or in relation to his disqualification to try the cases, or to make an order in them?

"*Answer.* My belief is, that he stated it was on account of his relationship by blood or marriage.

"*Question.* But did you get the idea then, from what the judge said, that he was the owner of the land, and directly interested in the subject-matter of the suits?

"*Answer.* I cannot say positively about that. I do not think I did.

"*Question.* Did you ever get that idea until after the cases were transferred to Austin?

"*Answer.* No, sir; I do not think I did.

"*Question.* You did not know the fact, if fact it be?

"*Answer.* No, sir.

"*Question.* And you thought it was a disqualification resulting from his connection with the parties?

"*Answer.* I judged so from the entry on the record.

"*Question.* I did not ask your judgment from the record. I ask you to speak from what Judge Watrous said in open court?

"*Answer.* I have told you as nearly as I can recollect." (See p. 181; also, pp. 174, 177, 180.)

In cross-examination, May 1.

"WITNESS.—I desire to make some explanation of my testimony on Thursday. In regard to the judge disclosing his interest at the April term of 1851, I recollect that he stated that he was part owner of the lands.

"*Question,* (by Mr. CLARK.) Is that all the correction you wish to make?

"*Answer.* That is all, except as to the length of April and May term. I said fifty-six days; it was probably seventy days.

"*Question.* When did this new recollection come to you?

"*Answer.* On returning to my room and thinking over it. When I was called here, I did not know on what point I was going to be examined.

"*Question.* Do you not recollect how I questioned you very particularly on that point?

"*Answer.* Yes; but you questioned me very fast.

"*Question.* When did this thing return to your recollection?

"*Answer.* On the very day I was examined here. I went to my room, and I began to think and study it over.

"*Question.* You recollect that I put the question half a dozen times, with a view to refresh your memory?

"*Answer.* I recollect you did.

"*Question.* Did you have any conversation with Judge Watrous on that point?

"*Answer.* I did have a conversation with Judge Watrous, for the purpose of refreshing my memory.

"*Question.* And he did refresh it?

"*Answer.* He did, sir; but Judge Watrous could not get me to state a falsehood.

"*Question.* Was your recollection of that incident is aided by your conversation with Judge Watrous?

"*Answer.* I talked with Judge Watrous and Colonel Love about it.

"*Question.* When did you have that conversation about it?

"*Answer.* The evening of the day I was examined.

"*Question.* Can you give the language the judge used when he stated his pecuniary interest in the suits?

"*Answer.* He stated that they need not proceed any further; that he could not try any of the Lapsley cases; that he had an interest in them—an interest by marriage; and that he was part owner of the lands. That was about the language he used, as well as I recollect.

"*Question.* Then he said he was part owner of the lands?

"*Answer.* Yes; he had a personal interest in the lands, or in the suit.

"*Question.* Or in the subject-matter?

"*Answer.* Yes; that was his expression, I think.

"*Question.* And are you certain, now, that the disqualifying relations that he spoke of was not one of blood or marriage?

"*Answer.* I think he stated both—that he had an interest both ways?

"*Question.* Was it true that he had an interest, by blood or marriage, disqualifying him?

"*Answer.* I do not know whether it was true or not."—Page 190.]